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OPINION NO. 85-45



Office of the Attorney General

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April 22, 1985

The Honorable Ted B. Wyndham
Municipal Judge
Post Office Box 148
Greenwood, South Carolina 29646

Dear Judge Wyndham:

In a letter to this Office you questioned whether Section 23-1-15 of the 1976 Code of Laws, which permits public parking lots to be brought within police jurisdiction, authorizes a law enforcement officer to administer a breathalyzer test to an individual arrested for driving under the influence while driving in such a parking lot. Such statute provides

"(a)ny real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot ... (when posted) ... In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area."
[Emphasis added].

REQUEST LETTER

Continuation Sheet Number 2
To: The Honorable Ted B. Wyndham
April 22, 1985

Section 56-5-2950 of the 1976 Code of Laws, the "implied consent" statute, provides that:

"(a)ny person who operates a motor vehicle upon the public highways of this State shall be deemed to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested... (for driving under the influence)"

In the opinion of this Office, Section 56-5-2950 is a law relating to the unlawful operation of motor vehicles which a law enforcement agency is authorized to enforce with regard to public streets and highways as expressed in Section 23-1-15. Therefore, a breathalyzer test may be administered pursuant to Section 56-5-2950 to an individual arrested for driving under the influence while driving in a parking lot which is posted as permitted by Section 23-1-15. 1/


1/ Even if Section 23-1-15 could not be construed to authorize a breathalyzer test pursuant to Section 56-5-2950, a breathalyzer test could still be administered.

Section 56-5-2930 of the 1976 Code of Laws prohibits any individual under the influence of liquor from driving a vehicle within this State. Such offense can be committed on private property. In a previous opinion of this Office dated May 31, 1983, it was stated that the driving under the influence statute has a broad application "... because it applies to driving any vehicle 'within this State' and not just private highways." See also: 1969 Op. Att'y. Gen. No. 2634 p. 39. Therefore, even though a parking lot has been brought within police jurisdiction pursuant to Section 23-1-15, such would not be required in order to arrest an individual for driving under the influence in such parking lot. Moreover, this Office in the May 31, 1983 opinion also determined that while the "implied consent" statute does not apply when an offense occurs on private property, a breathalyzer test is still authorized where the offense of driving under the influence and the arrest therefor occurs on private property. Such is consistent with the holding of the Alaska Court of Appeals that a defendant has no constitutional right to refuse to submit to a breathalyzer examination. See: Coleman v. State, 658 P.2d 1364, 1365 (Alaska App. 1983). I am enclosing a copy of the May 31, 1983 opinion for your review.

Continuation Sheet Number 3
To: The Honorable Ted B. Wyndham
April 22, 1985

I am advised that the State Highway Patrol is interpreting Section 23-1-15 consistent with the above construction. If there are any questions concerning the above, please contact me.

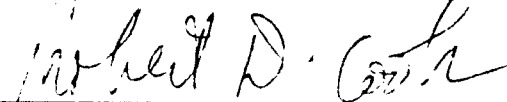
Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:djg

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions